

§366.26(l). Parents must consent to the filing of a writ petition; consent may not be inferred from the parent’s failure to appear for a crucial hearing. *Guillermo G. v Superior Court* (1995) 33 CA4th 1168, 1172, 39 CR2d 748. In addition, parents must sign the petition. See *Suzanne J. v Superior Court* (1996) 46 CA4th 785, 787, 54 CR2d 25. See also §102.113 for the judge’s obligation to notify parties of the procedures for seeking an extraordinary writ.

## 2. [§102.113] Advice Concerning Appeal

After a disposition hearing, the court must advise the parent, guardian, and child of the right to appeal. Cal Rules of Ct 1435(d)–(e), 1436.5(d). This right includes the right of an indigent appellant to counsel and to a free copy of the transcript. Cal Rules of Ct 1435(d)(3)–(4).

➡ JUDICIAL TIP: Many judges keep Judicial Council forms JV-820 and JV-825 available in the courtroom.

Failure to give a homeless parent notice of right to file a writ petition will make the orders appealable following the .26 hearing, even though the issues raised would otherwise have only been reviewable by writ. *In re Rashad B.* (1999) 76 CA4th 442, 450, 90 CR2d 462 (court could have complied with Welf & I C §316.1 by designating a permanent mailing address, such as the address of the social worker or parent’s counsel, and then required the parent to maintain close contact with that person). However, if a parent has failed to stay in contact with his or her attorney at the time the .26 hearing is being set, has failed to sign a document indicating personal authorization of the writ petition, and has generally disappeared, the attorney is absolved from the professional responsibility of filing a petition or a notice of intent. *Janice J. v Superior Court* (1997) 55 CA4th 690, 692, 64 CR2d 227.

## IV. SAMPLE FORMS

### A. [§102.114] Script: Conduct of Disposition Hearing

#### (1) Introduction

[Mr./Ms.] [name of clerk], please swear all persons who may wish to speak during the proceedings.

[If parents and child are represented by counsel and all required conflict of interest statements are on file, go to (5).]

#### (2) Appointment of Attorney for Parent(s) or Guardian(s)

You have a right to be represented by an attorney during this disposition hearing and during all other hearings in the juvenile court and the court will appoint an attorney for you if you cannot afford to hire one. If you want to employ a private attorney, the court will give you an opportunity to do so.

[Or]

The court has reviewed the financial declaration of *[name of parent or guardian]* and finds that *[he/she]* is entitled to appointment of counsel. At this time, the court appoints *[name of attorney]* to represent *[him/her]*.

☛ JUDICIAL TIP: When the attorney is on the staff of a governmental agency, it is the *office*, not the individual attorney, that is being appointed.

*[If parents waive counsel]*

This is a serious matter. The court might determine that *[name of child]* will need to be placed outside your home and that, eventually, your parental rights may be terminated. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

*[When applicable, add]*

The court now finds that the parents have intelligently waived their right to counsel at this hearing.

*[If child is represented by counsel and there is no motion for separate counsel, go to (4) and/or (5).]*

### *(3) Attorney for Child*

The court has read and considered the documentary material submitted by the Department of Social Services for the limited purpose of assessing the benefit, if any, of appointing counsel for the child. Would anyone like to be heard on this issue?

*[After hearing evidence, if any, on issue of child's need for attorney]*

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints *[name of attorney]* as the child's CAPTA guardian ad litem to represent the child.

[Or]

The court finds, based on the facts of this case, that there is no identifiable benefit to the child that would require appointment of counsel at this time because *[give reason]*.

- ☛ JUDICIAL TIP: It is advisable to ask counsel for DSS if there are any potential conflicts of interest among the children (if multiple siblings are involved) and, if so, to appoint separate counsel for the siblings.

*(4) De Facto Parent*

Mr. and Ms. *[name of parents]*, the court has received your request to be granted “de facto parent” status. With this status, you will be entitled to be present and to present evidence at this hearing. A de facto parent is one who cares deeply for the child and who has assumed a parental role on a day-to-day basis for a substantial time. A de facto parent may also have information about the child that other participants in the juvenile court process might not have.

*[Testimony is presented on this issue with respect to each person claiming de facto status either at this time or at some later time. See form in §102.115 for findings of de facto status.]*

*(5) Explanation of Procedure/Notification of Consequences*

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings. You have already participated in a detention hearing and a jurisdiction hearing. At the jurisdiction hearing *[which just took place/which took place on [date]]*, the court found that the facts set out in the petition filed by the Department of Social Services were true. This hearing will determine whether your child should be declared a dependent child of the court, that is, whether the court should take jurisdiction of your child’s case in order to exercise supervision over the child. Also to be determined at this hearing is whether your child should *[remain in/be returned to]* your custody or should be removed from your custody until certain conditions are met and, if so, what services should be provided to help you meet these conditions.

If *[name of child]* cannot be returned home at the end of a \_\_\_\_-month period, your parental rights may be terminated. There will be further hearings before this happens.

- ☛ JUDICIAL TIP: Very often, the attorney for the parent or guardian will state that he or she has explained these matters to the parents and will go on to explain the position of the parents or

guardians. Many judges train attorneys who appear in their courts to take this responsibility.

*[If Welf & I C §361.5(b) is applicable]*

By now, *[the social worker/your attorney]* should have informed you that the Department of Social Services is claiming that your child should be removed from your custody and that services that could help your family reunite (reunification services) should not be offered because of the seriousness of the *[abuse/neglect]* and the unlikelihood that you could become a fit parent. If it is found that it would not be worthwhile to offer you reunification services, I will set a hearing for 120 days from now to select and implement a permanent plan for your child. Your parental rights may be terminated at that hearing.

*(6) Notice of Hearing*

*(a) One Parent Not Present*

*[If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state]*

The court finds that notice has been given as required by law. The *[mother/father/guardian]* has failed to appear.

*(b) Both Parents Present*

The court finds that the *[mother/father/guardian(s)]*, the child, and all counsel were notified of this hearing and served with the petition as required by law.

*(c) Notice Attempted*

The court finds that the following attempts were made to locate the *[mother/father/guardian(s)]*: *[List attempts]*. The court has reviewed the declaration of search and finds that the efforts made to locate and serve the *[parent(s)/guardian(s)]* were reasonable.

*(d) Insufficient Attempts at Notice*

The court finds that the Department has not used due diligence in attempting to locate the *[parent(s)/guardian(s)]*. The case is therefore continued for one day. The Department shall take the following steps to locate the *[parent(s)/guardian(s)]*: *[List steps, e.g., check with Department of Corrections; check with child's school]*.

*Note:* Only rarely should a judge dictate to DSS specific search efforts that must be undertaken.

*(7) Waiver of Advisement of Rights*

*[To each participant]*

Did your attorney explain your rights to you? Do you waive advisement of rights?

*[If the answer to both is yes, go to (10).]*

*(8) Advisement of Rights*

You have certain rights at this hearing. These are (1) the right to see and hear all witnesses who may be examined by the court at this hearing, (2) the right to cross-examine, which means ask questions of, any witness who may testify at this hearing, (3) the right to present to the court any witnesses or other evidence you may desire, and (4) the right to a hearing on the issues raised in the petition. You have the right to assert the privilege against self-incrimination *[but anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding]*.

*Note:* See discussion in §102.27.

*(9) Advisement re Addresses Under Welf & I C §316.1*

The address that *[is in the petition/you gave the court [at previous hearings/today]]* will be used by the court and the social worker for all further notices unless you advise the court and the social worker of any changes in address.

*(10) Evidence*

*[Court reads any written reports and states for the record all material read by the court.]*

The court has read and considered and now receives into evidence the social study report of *[date]*.

*Note:* The term for the social worker's report varies from county to county. Whatever the local usage is, the court must indicate which documents it is relying on. The social study is required to be filed and transmitted to the parties 48 hours before the hearing. [Cal Rules of Ct 1455\(a\)](#). In the order of disposition, the court must state that it has read and considered the social study report. [Welf & I C §358\(b\)](#); [Cal Rules of Ct 1455\(b\)](#).

*[To parent, guardian, child, or other interested person]*

Now is the time for you to present evidence or make a statement. The court's orders may include an order removing *[name of child]* from *[his/her]* home and placement with other caretakers. Orders may also

cover visitation and plans for reunification should *[name of child]* be removed from the custody of *[his/her]* *[parents/guardians]*.

If the court makes findings solely on the basis of the evidence in the social worker's report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

*[To parent, guardian, and the attorneys]*

May the court base its findings solely on the social worker's report and other documents that it has received?

*[If the answer is no, the court should orally examine the child, if present, and the parents or other persons with relevant knowledge bearing on disposition. The court must allow cross-examination of any witness who may testify.]*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides on a placement for *[name of child]*.

*[To persons seeking fifth amendment protection from testifying (see §102.27)]*

I am going to grant the *[joint]* request of the Department of Social Services *[and the district attorney]* for immunity and will order you to testify despite your claim of self-incrimination. However, anything you say here may not be used against you in any criminal court or juvenile court proceeding arising out of the same conduct we are discussing here today.

*[If there is no joint request, the judge must hear argument on why immunity should not be granted. Cal Rules of Ct 1421(d).]*

#### *(11) Introduction of Court Process to Child Witness*

Hello. I am Judge *[name]*. I am in charge of this courtroom, My job is to make sure that everything is fair and that everyone else here does his or her job correctly. This is Bailiff *[name]*. *[He/She]* is here to make sure that no one gets hurt. *[Mr./Ms.] [name]* is the court reporter. *[He/She]* will write down everything that people say so that if anyone later forgets what was said, we can look it up. It is important to speak loudly and clearly so that *[Mr./Ms.] [name]*, the court reporter, can hear you.

Mr. *[name]* and Ms. *[name]* are the lawyers. They will be asking you some questions. Their job is to help you tell what you saw and heard so that we can find out the truth.

It is very important to tell the truth, because if I do not understand the whole truth, I may not be able to make the plan that is best for everyone.

You will be answering questions this afternoon. We will stop often so that everyone may have a rest. If you have any problems before the next break, let [*name of support person/name of attorney/me*] know.

Also, you may not understand all the questions. We are used to talking to other adults and not to children. When you don't understand a question, raise your hand and let me know that you don't understand. If you don't know the answer to a question, just say "I don't know" or "I don't remember."

*(12) Assessing Child's Competency*

*Note:* Judges and child development experts suggest assessing children's communication skills and other aspects of competency by determining whether the child's speech is intelligible and whether he or she can follow the discussion. Here are some suggested conversational openers designed to permit this determination.

Here we are in the courtroom. What do you see here?

What did you do this morning?

*[For school-age children]*

Tell me about your school.

What do you do when you first get to school?

What do you do after lunch?

—Tell me more about [*certain activities*].

What is your favorite part of the day?

—Tell me more about it.

What is your favorite television program?

—Tell me about it.

—Who is in it?

—What happens in the program?

*(13) Advisement on Reunification*

At this time I am required to advise the parents of what happens if you fail to meet your reunification requirements. We review your progress on your reunification requirements in six months. If you have failed to meet your reunification requirements at that time, we review your progress on meeting your reunification requirements again in another six months. If you have still failed to meet your reunification requirements, the court may give you an additional six months or terminate all further reunification services. In no event can the court give you more than 18 months from the date of original detention to meet your reunification requirements. If reunification services are terminated, the court will ask the Department of Social Services to propose a long-term plan for the child. That plan can be long-term foster care, guardianship, or adoption. If the department recommends adoption, there is a possibility that your parental rights will be terminated. I urge you to stay in touch with your social worker and your attorney, and to put forth every effort to meet your reunification requirements.

*(14) Advice to Child, Parent, and Guardian Concerning Right To Appeal*

You have the right to appeal the dispositional order. You have 60 days from today to file an appeal to the Court of Appeal and may use Judicial Council form JV-800, which is available here in the courtroom. If you do not have an attorney and cannot afford one, one will be appointed for your appeal. If you have appointed counsel, [he/she] will represent you for appeal. You will need to include a transcript of these hearings. If you are indigent, one will be provided to you free of charge.

Do you understand your appeal rights? Do you have any questions?

*(15) Advice to Attorneys, Child, Parent, and Guardian Concerning Right To Appeal the Setting of .26 Hearing*

To preserve your right to appeal from the order setting a .26 hearing, you must first seek an extraordinary writ using Judicial Council forms JV-820 and JV-825, which are available here in the courtroom. The writ petition must be filed with the Court of Appeal within seven days of the date of the order setting a .26 hearing. Under [California Rules of Court 1436.5\(d\)–\(h\)](#), you or your attorney must file the petition, after consulting experienced writ attorneys if necessary.

*(16) Final Question*

Do you have any questions about the court's order(s) or what is going to take place in the future?

**B. [§102.115] Script: Findings and Orders**

*(1) Introduction*